

1 Q And he confirmed to you that these steps reflected
2 on this invoice were a component of operating and constructing
3 the stations? Is that right?

4 MR. BECHTEL: I object. That question has been
5 asked and answered.

6 JUDGE CHACHKIN: Sustained.

7 BY MR. HOLT:

8 Q If you would direct your attention to page 19 of
9 your testimony, pages 19 and 20, invoice dated June 4, 1990.
10 Do you have that before you?

11 A I do.

12 Q I think your tabulation on page 15 of the -- of your
13 testimony indicates that you allocated 50 percent of the legal
14 fees reflected on this invoice to the legal fees that were
15 calculated in your November 7th letter. Is that right?

16 A Correct.

17 Q Now, which of the entries reflected in this invoice
18 were included in those calculations? Do you recall?

19 A Well, I think -- my recollection is all those except
20 the last three which related to cable television matters.

21 Q So your -- the preparation of the letter to Ms.
22 Bishop concerning station records was included in those
23 calculations?

24 A I believe that's correct.

25 Q And Ms. Bishop at the time was the General Manager

1 of TV 40 in Dillsburg? Is that right?

2 A I'm not sure what position she held.

3 Q She was an employee of TV 40 at the time?

4 A I assume so, yes.

5 Q And you included discussions with Commission staff
6 and Ms. Bishop concerning the LPTV station records related to
7 TV 40 in your calculations --

8 A Yes.

9 Q -- for the, the construction permit expenses? Is
10 that right?

11 MR. BECHTEL: I didn't understand that question. I
12 ask counsel to rephrase it.

13 MR. HOLT: Well, I'll be happy to do that.

14 BY MR. HOLT:

15 Q You included in your calculations for the
16 construction permit expenses fees that were generated in
17 connection with discussions that someone from Cohen & Berfield
18 had with Commission staff and an employee of TV 40 concerning
19 TV 40's station records? Is that right?

20 A Well, concerned LPTV station records. I don't know
21 if those discussions were limited to TV 40 or not. I mean,
22 you have to keep station records if you have an existing
23 station and obviously when the permits were built you'd have
24 to, to make sure you were keeping the right station records
25 there.

1 Q Did the construction permits have a Network
2 Affiliation Agreement at that time to your knowledge?

3 A I don't remember.

4 Q But you recall including in your calculations for
5 the low power construction expenses fees that were generated
6 in connection with filing LPTV Network Affiliation Agreements
7 with the Commission? Is that right?

8 A Yes. I think all this was part of a -- was part of
9 the compliance program. At the time of this June 4th bill our
10 low power applications were still pending. We'd told the
11 Commission that we were going to establish the compliance
12 program and it was going to apply to TV 40 and then to the
13 permits, and this was work that we were doing -- that we had
14 done to fulfill the pledge we made to the Commission while our
15 applications were pending as to the compliance program.

16 Q And you billed to the low power construction permits
17 fees that were generated in conjunction with reviewing
18 documents that had been sent by Ms. Bishop concerning the
19 Dillsburg LPTV station? Is that right?

20 MR. BECHTEL: Objection. It's been asked and
21 answered.

22 JUDGE CHACHKIN: I'll overrule the objection.

23 WITNESS: Yes.

24 BY MR. HOLT:

25 Q Do you recall discussing this invoice with Mr.

1 Cohen?

2 A Yes.

3 Q And Mr. Cohen confirmed to you that the services
4 reflected on this invoice were prepared or provided in
5 conjunction with the construction and operation of the LPTV
6 station?

7 A Which -- for the station or stations?

8 Q Oh, I'm sorry, the low power -- of the construction
9 permits?

10 A Yeah. This was, this was the initial phase of
11 establishment of the compliance program --

12 Q I'm saying --

13 A -- and that's what they were, and the compliance
14 program was set up conceptually and there was also -- there
15 was beginning to be some preliminary implementation of it and
16 that's -- this is while our permits were pending and I
17 considered that would be an advocacy of prosecution of the
18 application pledged to the Commission. Yes, I included those.

19 Q I understand that, but my question was did you
20 discuss this with Mr. Cohen? Mr. Cohen was the author of this
21 invoice, was he not?

22 A Yes, but I knew what -- I discussed it with Mr.
23 Cohen. He said yeah, this is, this is our compliance program.

24 Q And he told you that this related to the
25 construction and operation of the LPTV stations? Is that

1 right?

2 A Well, I knew that from the invoice. He didn't have
3 to state the obvious to me.

4 Q He didn't confirm to you that in his opinion that
5 these related to the LPTV stations as opposed to TV 40?

6 A Well, maybe I didn't understand but, you know,
7 obviously TV 40 is an LPTV station. I mean --

8 Q Well, I --

9 A Mr. Holt, we had to establish an operational
10 compliance program. It's initial implementation applied to TV
11 40. It had a broader scope than that because it was
12 conceptional and it also -- as we said in our memo, it would
13 apply to the, to the permits.

14 Q Well, my question is did you -- did Mr., Mr.
15 Berfield was the author of this invoice and he also was the --
16 sorry. Mr. Cohen was the author of this invoice and he was
17 the principal architect to my understanding of the compliance
18 program, and my question is did he confirm to you that these
19 services reflected in this invoice related to the construction
20 and operation of the low power construction permits?

21 A Yes.

22 Q Isn't it true that at the time you prepared your
23 letter of November 7th the compliance program hadn't been
24 implemented for the low power construction permits?

25 A No, it's not true.

1 Q It had been implemented for them?

2 A There was one basic compliance program and it was
3 -- it started out and drafted -- it started as reflected in
4 this June 4, 1990 statement and then it was completed and a
5 certification made on November 9th of the initial audit that
6 was completed and that's reflected in the November 9th letter.

7 Q Is that a certification that related to the low
8 power construction permits?

9 A I think that was a certification that related to the
10 compliance with the Commission rules essentially of TV 40, but
11 I -- you remember I only counted half of the \$1,500.

12 Q Well, it was true at the time you prepared the
13 November 7th letter that you knew Raystay was preparing to
14 sell its low power construction permits? Correct?

15 A I had been told that they had offers on the table.
16 I didn't know what their intentions were.

17 Q Well, you were advised, were you not, by David
18 Gardner that he wanted you to prepare the November 7th letter
19 with a view towards selling the five low power construction
20 permits? Correct?

21 A I was told that they had offers on the table for
22 sale of the permits and that he wanted me to recap our legal
23 fees and expenses and to provide some advice as to what were
24 permissible, recognizable expenses under the Commission's
25 rules.

1 Q With a view towards selling those permits? Isn't
2 that so?

3 A In the context that they had offers on the table.

4 Q And you were aware at the time that you made the Red
5 Lion allocation that, in fact, that, that construction permit
6 was the subject of a proposed sale?

7 A Yeah, that's correct

8 Q And you were also aware then that the compliance
9 program would never be implemented for the CPs, were you not?

10 A No, because I had -- it was never put to me that we
11 were definitely going to -- they were definitely going to sell
12 the CPs and as it turned out, as everybody in this room knows,
13 four of the CPs were never sold and they were turned down.

14 Q So you were not told by David Gardner at the time
15 that you made your Red Lion allocation that he was -- that
16 Raystay was planning to sell the Red Lion construction permit?

17 A Yes. He told me that they had a proposal to sell
18 the Red Lion construction permit.

19 Q And you knew that if the Red Lion construction
20 permit was sold that no compliance program would ever be put
21 into effect with respect to that station? Isn't that right?
22 (TAPE 5)

23 A Well, I don't know. I mean, we still had, we still
24 had four other, four other permits and I had not seen a
25 contract. I mean, I was told that they were going to be sold.

1 So I don't know how definitive my thinking was. I didn't
2 really think that -- when he told me that they were -- had a
3 proposal to sell Red Lion, I didn't think of it necessarily in
4 terms that the compliance program would no longer apply to it
5 when it was sold. He still had four other permits.

6 Q But you knew that it wouldn't apply to the
7 construction of the Red Lion permit?

8 A Wouldn't apply to what?

9 A To the Red Lion permit because it wasn't going to be
10 a Raystay permit after it was sold. Right?

11 MR. BECHTEL: I object to that as argumentative and
12 asked and answered.

13 JUDGE CHACHKIN: Sustained.

14 BY MR. HOLT:

15 Q Mr. Berfield, had you at any time seen the
16 applications that were filed by the applicant in the
17 integrated case that was seeking the reimbursement of its
18 expenses?

19 A I think I saw one application, yes.

20 Q You did see one of those applications?

21 A Yes.

22 Q Do you recall when that was?

23 A It was within the last few weeks.

24 Q Do you recall who provided a copy of that
25 application? How did you come to see a copy of that

1 application?

2 A I believe my counsel, Mr. Bechtel, got it out of the
3 file somewhere.

4 Q You didn't see it at the time of the Red Lion
5 expense allocation, did you?

6 A No. No.

7 MR. HOLT: That concludes my questioning.

8 JUDGE CHACKIN: Does the Bureau have any cross?

9 MR. SCHONMAN: Yes.

10 CROSS-EXAMINATION

11 BY MR. SCHONMAN:

12 Q Mr. Berfield, did you disclose at any time to Mr.
13 Tillotson that the allocation of expenses for the Red Lion CP
14 was a function of multiple construction permits?

15 A I never had any conversations with Mr. Tillotson.

16 Q So your answer is no?

17 A No, because I never, I never had any discussions
18 with Mr. Tillotson or anybody else at Arent, Fox.

19 Q Was the Red Lion application the lead application
20 among the, the five CPs?

21 A It was in this sense, Mr. Schonman. When I went to
22 prepare the applications it was apparent to me that it was
23 essentially one application, that in low power the way the
24 forms are and the requirements for the exhibits and so forth
25 is you prepare one basic application and then you just have to

1 make minor changes in the remaining applications. And the,
2 the engineering to me -- was submitted to me on the Red Lion
3 application by Mr. Hoover first. That had been the first site
4 search he'd done. He completed his engineering on that first.
5 So I prepared the non-engineering portion -- when I received
6 his engineering for Red Lion I prepared the non-engineering
7 portion of the application and that then served as the
8 prototype with just very minor editorial changes for the
9 subsequent preparation of Lancaster and Lebanon applications.
10 So in that sense you might consider it the lead application,
11 but that's how, that's how the work went.

12 Q Did you consider it the lead application?

13 A Well, in the sense of that's how I prepared, that's
14 how I prepared it and that's how the work went.

15 Q At the time that you were given your marching
16 orders, so to speak, to prepare applications for the low power
17 construction permits, at that time did you consider the Red
18 Lion application to be the lead application?

19 A Well, I don't know what you mean by, by lead. I
20 know that -- the way it started out was that there were six
21 different sites that Mr. Gardner, David Gardner, wanted
22 researched. Three of those were Red Lion, Lancaster and
23 Lebanon. And I remember seeing fairly early on -- and the
24 reason that the Red Lion was done first was that Raystay owned
25 the land for the site for Red Lion, so Mr. Hoover was able to

1 produce that frequency search early on and it became -- when I
2 got that I knew we had channels available for Red Lion, but
3 then subsequently he prepared the frequency searches for
4 Lancaster and Lebanon and he found channels for them, too. He
5 also found channels for the other three sites that we didn't
6 file on and then Raystay made the determination to file one,
7 one Red Lion, two Lebanon and two Lancaster and that's the way
8 it went.

9 Q So if I understand your testimony correctly, your
10 work on the Red Lion CP application happened to be the first
11 -- that was the first application you worked on among the
12 five?

13 A And it was the model or the prototype for the other
14 applications. That's correct.

15 JUDGE CHACHKIN: Are you saying the applications
16 were not prepared simultaneously?

17 WITNESS: That's correct.

18 JUDGE CHACHKIN: What was the lead time between the
19 Red Lion and the other applications?

20 WITNESS: Oh, a few days, maybe a week.

21 BY MR. SCHONMAN:

22 Q Did you know at the time you were preparing the Red
23 Lion application that you would at some future date also be
24 preparing the other four CP applications?

25 A Yes.

1 Q How did the fact that the Red Lion application was
2 the first application you worked on, how did that fact affect,
3 if at all, your billing of Raystay for the work that you
4 performed?

5 A Well, I -- when I had originally given Mr. Gardner a
6 quote of between \$5,000 and \$6,000 for the five applications I
7 had in my own mind that there would be about \$4,000 for doing
8 the prototype, the first application, and then \$300 -- or \$600
9 for Lebanon and \$600 for Lancaster to cover the little changes
10 that would be made in those. And to that extent it entered
11 into my, my thinking. In other words, when I came to my 50
12 percent allocation I recalled that I had prepared, I had
13 prepared the applications and all the applications -- all of
14 them were virtually the same, very minor changes. I'm just
15 talking about non-engineering now, Mr. Schonman.

16 Q Sure. Who did you give that quote to, the --

17 A The \$5,000 or \$6,000?

18 Q Yes.

19 A To David Gardner.

20 Q To David Gardner. Did you convey to him that the
21 first application would be in the range of \$4,000 and then
22 the, the other four applications would be something less than
23 that?

24 A I don't recall that I articulated that breakdown. I
25 think I just gave him the overall range of \$5,000 to \$6,000,

1 but I'm just telling you what my thinking was as to what went
2 into the \$5,000 to \$6,000 estimate.

3 Q Now, I want to, I want to understand the, the way
4 you apportioned the percentages. In arriving -- and please
5 correct me if I'm, if I'm wrong, Mr. Berfield. As I
6 understand it, it was a two step process. First you
7 determined from all the invoices how much of the expenses were
8 attributable to the five low power applications. That was
9 Step No. 1. And then Step No. 2 you took 50 percent of that
10 and that was attributable to the Red Lion application?

11 A Yes. The way it worked out, Mr. Schonman, was that
12 I was first given the project of finding out -- recapping the
13 expenses for all, all five low powers in the aggregate and I
14 did that and reflected those in my November 7, 1991 letter.
15 Then a few weeks after that I was asked -- I was told that
16 there was a proposal to sell the Red Lion permit for \$10,000
17 and was asked to provide an opinion whether -- what figure or
18 allocation would be -- what would be appropriate and would be
19 permissible under the Commission's rules. There was a time
20 lag in there of a few weeks. In other words, when I prepared
21 the November 7, 1991 that was just to gather all the expenses
22 relating to the five low power in the aggregate.

23 Q Now, in order to render an opinion as to the first
24 step, that is, the amount of money attributable to all five of
25 the low power applications, you had to examine the invoices --

1 A Correct.

2 Q -- that you had sent to Raystay? When you moved on
3 to Step 2 did you go back and review the invoices once again
4 or did you merely take 50 percent of that total figure
5 attributable to the five low power CPs?

6 A I think I went back just to check. There was only a
7 few weeks interval between my November 7th and the
8 allocations. I think I just went back to check to see if in
9 any if the bills we had broken out Red Lion vis-a-vis Lebanon
10 and Lancaster, and I think I only found one bill, the last
11 one, that had a specific reference to Red Lion. But that's
12 about the extent that I went back and checked.

13 Q Okay.

14 A I was relying on the numbers that were in my
15 November 7, '91 letter.

16 Q Well, as painstaking as this may be, I'd like to go
17 through each of the bills. Mr. Berfield, if we can turn to
18 page 16 of your direct testimony and that's a bill for Raystay
19 Company for legal services and disbursements dated March 13,
20 1989. Do you have that before you?

21 A I have it. I have it, Mr. Schonman. November 7,
22 '91 letter.

23 Q Well, as painstaking as this may be, I'd like to go
24 through each of the bills. Mr. Berfield, if we can turn to
25 page 16 of your direct testimony and that's a bill for Raystay

1 Company for legal services and disbursements dated March 13,
2 1989. Do you have that before you?

3 A I have it. I have it, Mr. Schonman.

4 Q Now, before I get into this bill I just want to
5 backtrack one page to page 15, and as I understand it from
6 what you stated on page 15 100 percent of the March 13, 1989
7 bill was attributable to the five construction permits. Is
8 that correct?

9 A You're absolutely right.

10 Q And then you took 50 percent of that figure and that
11 was attributable to the Red Lion?

12 A Well, let me say this, that -- yes, but when I came
13 to do the 50 percent allocation of Red Lion I didn't go back
14 and do 50 percent of each individual bill. I had my, I had my
15 November 7, '91 letter which gave this figure of \$15,397.03
16 and I had just performed that work a few weeks prior, so I
17 took 50 percent of that, of that figure.

18 Q Of the total figure?

19 A Yeah. I didn't go back and do 50 percent of each of
20 the -- for the Red Lion allocation.

21 Q Would it be accurate to do that?

22 A You'd reach the same result.

23 Q All right then. Let's do that.

24 A At least I think you would.

25 Q All right.

1 JUDGE CHACHKIN: I guess we'll find out.

2 BY MR. SCHONMAN:

3 Q Would it be your testimony that 50 percent of the
4 \$5,200 figure on the March 13, 1989 bill was attributable to
5 the Red Lion CP?

6 A Yes.

7 Q How would you arrive at the 50 percent figure?

8 A Well, I arrived at the, at the 50 percent figure
9 because, as I indicated, in my thinking on the, on the total
10 bill of \$5,200 that about \$4,000 was attributable to the first
11 application prepared and the first application was the Red
12 Lion. Actually I could have attributed at a higher percentage
13 than 50 percent on that particular bill, the Red Lion. If you
14 take \$4,000 of \$5,200 that's almost 80 percent. I could have
15 done that. But I'm just saying that I took the totality of
16 the figure and applied the 50 percent to that, Mr. Schonman.

17 Q All right. You've mentioned 50 percent. You
18 mentioned possibly 80 percent. As you sit there now, what
19 percentage of that figure \$5,200 figure is attributable to the
20 Red Lion construction permit?

21 A You mean in accord with what I presented in my
22 allocation or --

23 Q As you sit here right now, how much of that \$5,200
24 expense is attributable to the Red Lion CP?

25 A Well, a minimum of 50 percent and as high as 80

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1 percent.

2 Q Mr. Berfield, the first entry, "Coordination with
3 David Gardner and Robert Hoover regarding low power channel
4 possibilities" --

5 JUDGE CHACHKIN: What page are we looking at now?

6 MR. SCHONMAN: We're, we're on the same page, the
7 March 13, 1989 bill. That's page 16.

8 JUDGE CHACHKIN: Oh, okay. Now we're going back to
9 that. Before we were looking at the, the tabulation. Now
10 we're -- all right.

11 MR. SCHONMAN: We're on page 16 now.

12 JUDGE CHACHKIN: Okay.

13 BY MR. SCHONMAN:

14 Q Now, the coordination entry, the work that was done
15 coordinating with David Gardner and Robert Hoover, are you
16 able to tell me how much of that work was done for the Red
17 Lion station?

18 A Not specifically. I mean, that --

19 Q Give me your best estimate.

20 A Well, I would say at least a third.

21 Q All right. "Coordination with Greg Daly as to
22 transmitter site arrangements," what percentage or dollar
23 amount of, of the work that was performed with Greg Daly was
24 attributable to the Red Lion CP?

25 A I don't think any of it was because Greg Daly worked

1 on Lebanon and Lancaster.

2 Q All right. The next entry is, "Preparation and
3 filing of five low power applications for Red Lion, Lancaster
4 and Lebanon," and what percentage or dollar figure of that
5 particular work is attributable to the Red Lion CP?

6 A Well, in view of my description, the way I prepared
7 the Red Lion, it could have been 90 or 95 percent.

8 Q And how do you come up with 95 -- 90 or 95 percent?

9 A Well, as I described to you, I -- all the work went
10 into preparing the Red Lion application and the others were
11 just copies. I just had my secretary change the channel
12 number and the, and the name and I think you had to give a
13 little different site information, and once I had prepared the
14 Red Lion application the Lebanon and Lancaster non-engineering
15 were very, very minor. That's why I say 90, 95 percent.

16 Q It was merely by chance, though, that the Red Lion
17 application happened to be the first application? Isn't that
18 correct?

19 A Well, I don't know what you mean by chance. I mean,
20 Mr. Gardner had said we were interested in filing on Red Lion.
21 Mr. Hoover had done the Red Lion engineering first. We owned
22 -- Raystay owned the site for the Red Lion. I received the
23 engineering first for Red Lion and I prepared it first.

24 JUDGE CHACHKIN: What was the status of the other
25 applications at the time you prepared the Red Lion

1 application?

2 WITNESS: Mr. Hoover was working -- finishing up on
3 the engineering, working on the engineering.

4 BY MR. SCHONMAN:

5 Q Do you know what percentage of that \$5,200 figure is
6 attributable to the preparation and filing of the
7 applications, the last entry there? In other words, Mr.
8 Berfield, there's no breakdown as far as --

9 A I understand there's no breakdown.

10 Q I need your help in, in giving me these numbers to
11 the best of your ability.

12 A Well, I don't -- I didn't have a breakdown.
13 Certainly the vast majority of the work was in that last item.
14 The first items were relatively minor items, \$200 or \$300
15 maybe. The rest of it was -- \$400. The rest of it's in the
16 application work.

17 Q Let's move on to the April 4, 1990 bill which is on
18 page 17 of your direct testimony. Now, as I understand it
19 from your computations on page 15, 100 percent of this bill
20 was attributable to the five low power applications?

21 A That's correct.

22 Q And am I correct that 50 percent of that is
23 attributable to the Red Lion application?

24 A Yes. That's what I did.

25 Q And how is it that you determined that 100 percent

1 of this \$4,000 was attributable to the low power applications?

2 A Because these were, these were applications that
3 were pending and in view of the Commission's ruling in Adwave
4 Raystay had to make a showing on behalf or in connection with
5 Mr. Gardner in order to obtain grant of the low power
6 application, and one component of the Commission's requirement
7 was a showing of good character on the part of Mr. Gardner and
8 that's exactly what this work was which results -- which
9 resulted in the, the filing of the amendment to the five low
10 powers and the work that was done was identical for all five
11 low power applications.

12 Q So the telephone conferences, which is Item No. 1,
13 and the preparation, which is Item No. 2, and Item No. 3 is
14 preparation and filing, those three items are all attributable
15 to the low power applications?

16 A They are, sir.

17 Q And 50 percent of that is attributable to the Red
18 Lion -- I believe I've asked you that.

19 A You did and --

20 Q And how did you arrive at that 50 percent figure?

21 A Well, let me say that, as I pointed out to you, I
22 didn't go through each -- when I had first gotten the
23 assignment to compile all the legal costs for the five low
24 power permits, which I did in the November 7, 1991 letter, it
25 came to the \$15,397 figure. Then I was asked, then I was

1 asked to provide an opinion as to whether \$10,000 for the Red
2 Lion permit would be acceptable and I applied a 50 percent
3 ratio because I knew, for example, that on the front end, on
4 the preparation of the application, the work on the Red Lion
5 had been substantially more than 50 percent and that all the
6 other work was virtually identical, so I kind of averaged it
7 out in my mind and said 50 percent is a reasonable, fair and
8 conservative apportionment given the similarity of the virtual
9 identity of the work done which would have had to be done from
10 one -- we'd have had to do all this work for one applicant or
11 five applicants. It was the, it was the same work. And so --
12 but I didn't go through, Mr. Schonman, each bill and apply a
13 50 percent or a 70 percent or an 80 percent and average it
14 out. I took the figure that I had from my November 7th
15 letter.

16 Q So you're not sure whether 50 percent of the
17 services provided in the April 4, 1990 bill were attributable
18 to Red Lion?

19 A They were in my opinion, at least, at least 50
20 percent, yes. That would be true with respect to all these
21 bills except, as I pointed out with the first bill, the Red
22 Lion could have been even, even higher and on some of the
23 others it could have been higher. I mean, if I wanted to take
24 the view -- in other words, my theory was that all the work
25 was identical. You'd have to do the -- if we just had the Red

1 Lion permit instead of \$15,000, we probably would have ended
2 up at \$14,000 and then virtually all the work that was
3 required to do one applied to and sufficed for all the others
4 due to the nature of the work.

5 Q Can we go on to page 18 of your direct testimony
6 which is another June 4, 1990, June 4, 1990 bill?

7 A Yes, sir. I have it.

8 Q And I just want to note that there are two June 4,
9 1990 bills and I understand from your computations on page 15
10 that 50 percent of the bill on page 18 is attributable to the
11 low power construction permit?

12 A No. I think that's incorrect.

13 Q I'm sorry, 100 percent.

14 A That's correct?

15 Q Okay.

16 A Yes. That work on June 4th, the way that worked,
17 Mr. Schonman, is that the work that was reflected on the April
18 4th bill, the showing of Mr. Gardner's good character, was
19 submitted to the Mass Media Bureau, to the staff, and the
20 staff indicated that additional work would be required
21 including -- the staff wanted specific measures, the fact that
22 the staff wanted the compliance program. So the, the work
23 reflected on the June 4th bill was just that. It was
24 preparing an additional declaration by Mr. Gardner and
25 telephone conferences by -- with -- by Mr. Cohen and the

1 members of the Mass Media Bureau, all relating to grant --
2 allocating grant of the low power CPs, so all that \$1,500
3 related to these CPs.

4 Q And 50 percent of that was attributable to the Red
5 Lion construction permit?

6 A A minimum, a minimum of 50 percent. Again, as I
7 tried to explain my theory, I could have attributed 75 or 80
8 or 90 percent of it to Red Lion because what you did -- we did
9 no more work for five than we did for one. We prepared one
10 declaration and it applied to all five permits.

11 Q Why didn't you allocate 60, 70 or 80 or 90 percent
12 if that's how much it was?

13 A Well, first of all, I was conservative. Mr. Gardner
14 had said the proposal was \$10,000. I could see readily that
15 50 percent, which I thought was a very conservative
16 allocation, would be adequate to, to justify in terms of
17 expenses, and in view of the way that the Red Lion application
18 was prepared and the other matters that I've discussed here I
19 felt the 50 percent was, was fair, reasonable and
20 conservative. I didn't need to go to 80 or 90 percent. I'm
21 just saying I could have under the way I looked at it.

22 Q It could have been 90 percent?

23 A I think it could have, yeah.

24 Q All right. Let's move on to the next bill which is
25 on page 19 and that bill is also dated June 4, 1990. And from

1 your calculations on page 15 am I correct that 50 percent of
2 that bill was attributable to the five low power applications?

3 A That's correct.

4 Q 50 percent of the \$3,200?

5 A That's correct.

6 Q How did you come up with that 50 percent figure, Mr.
7 Berfield?

8 A Well, I -- for the -- how I broke down the \$3,200?

9 Q Yes.

10 A I examined the time sheets as to the non-cable work
11 and reviewed the time sheets -- I mean for the cable work and
12 reviewed the time sheets for the low power work and spoke to
13 Mr. Cohen.

14 Q Can you go down item by item and tell me which items
15 are attributable to low power and which are not?

16 A The bottom three items are all --

17 Q Cable TV matter? So they are not attributable to
18 low power?

19 A That's correct. Everything else was.

20 Q Now, there aren't individual dollar figures for each
21 matter listed on this bill. How did you determine that the
22 top five matters constituted 50 percent of the \$3,200 figure?

23 A Well, we had, we had time sheets for the cable
24 matters which came up -- I believe the time sheets came up to
25 \$1,600, and then we had the remainder and we had some time

1 sheets on those, so it was obviously -- and I spoke to Mr.
2 Cohen -- that there was \$1,600 on the low power.

3 Q And 50 percent of the work performed in the top five
4 matters was attributable to the Red Lion construction permit?
5 Is that correct?

6 A Well, Mr. Schonman, I did not go through each bill
7 and say 50 percent. I took 50 percent of the overall number
8 and, as I've indicated, in my view you could have taken
9 anywhere from 50 percent to 90 percent.

10 Q So upwards of 90 percent of the work on the top five
11 could have been attributable to the Red Lion CP?

12 A In my judgment it could have been.

13 Q Let's move on to page 21. This is a bill dated
14 August 7, 1990 and as I understand it 92.3 percent of that
15 bill was attributable to the five low power applications?

16 A Yes, \$1,200. That first little item there was a
17 \$100 item and the, the conferences with the FCC staff
18 regarding grant of the applications. That was work that was
19 done, I think, primarily by Mr. Cohen after we had filed our
20 -- Mr. Gardner's declaration and after we had -- regarding the
21 compliance program and after we had filed the, the character
22 showing and that was Mr. Cohen's work in actually obtaining
23 grant of the applications which was \$1,200, and the little
24 cable item at the top is \$100.

25 Q So the Metal Township registration statement, that